

**To:** Daugherty, Steven A CIV NAVFAC Pacific, 09C (b) (6)  
**From:** Reynolds, Rebekah  
**Sent:** Mon 11/9/2015 10:16:53 PM  
**Subject:** Fw: Red Hill Administrative Order on Consent (AOC) - Non Disclosure Agreement for Subject Matter Experts  
[Red Hill NDA - Third Party Subject Matter Expert Final Oct 15.pdf](#)  
[ATT00001.htm](#)

FYI

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**From:** Huetteman, Tom  
**Sent:** Monday, November 9, 2015 12:14 PM  
**To:** Reynolds, Rebekah  
**Subject:** Fwd: Red Hill Administrative Order on Consent (AOC) - Non Disclosure Agreement for Subject Matter Experts

Tom Huetteman, Assistant Director  
Land Division, EPA Region 9  
415-972-3751

Begin forwarded message:

**From:** "Linder, Steven" <[Linder.Steven@epa.gov](mailto:Linder.Steven@epa.gov)>  
**Date:** November 9, 2015 at 11:25:12 AM PST  
**To:** "Ernest Lau ([elau@hbws.org](mailto:elau@hbws.org))" <[elau@hbws.org](mailto:elau@hbws.org)>, ERWIN KAWATA <[EKAWATA@hbws.org](mailto:EKAWATA@hbws.org)>  
**Cc:** "Pallarino, Bob" <[Pallarino.Bob@epa.gov](mailto:Pallarino.Bob@epa.gov)>, "Shalev, Omer" <[Shalev.Omer@epa.gov](mailto:Shalev.Omer@epa.gov)>, "[steven.chang@doh.hawaii.gov](mailto:steven.chang@doh.hawaii.gov)" <[steven.chang@doh.hawaii.gov](mailto:steven.chang@doh.hawaii.gov)>, "[roxanne.kwan@doh.hawaii.gov](mailto:roxanne.kwan@doh.hawaii.gov)" <[roxanne.kwan@doh.hawaii.gov](mailto:roxanne.kwan@doh.hawaii.gov)>, "Miyamoto, James A CIV NAVFAC HI, DOP" <(b) (6)>, "Vogel, Burr M CDR NAVFAC HI, OP" <(b) (6)>  
**Subject:** FW: Red Hill Administrative Order on Consent (AOC) - Non Disclosure Agreement for Subject Matter Experts

Gentlemen,

Please find attached the Non-Disclosure agreement that is necessary for you and your contracted experts to fully participate in the scoping process and technical discussions related to implementation of the Red Hill AOC.

Please let me know if you would like to discuss this agreement with EPA and DOH prior to the Navy's suggested November 16th discussion related to the agreement.

The regulatory agencies are working with the Navy to make sure that we make the Red Hill AOC implementation process as transparent to the public as possible by providing summaries of important information along with redacted versions of key information and deliverables.

We look forward to your participation in the upcoming scoping meetings scheduled from November 30th thru December 4th.

Please do not hesitate to contact me if you have any questions.

Steven C. Linder, P.E.  
Manager, Underground Storage Tanks Program  
Land Division (LND-4-3)  
US EPA Region 9  
415-972-3369

-----Original Message-----

From: Miyamoto, James A CIV NAVFAC HI, DOP

(b) (6)

Sent: Friday, November 06, 2015 5:55 PM

To: Pallarino, Bob <[Pallarino.Bob@epa.gov](mailto:Pallarino.Bob@epa.gov)>; Shalev, Omer  
<[Shalev.Omer@epa.gov](mailto:Shalev.Omer@epa.gov)>; [steven.chang@doh.hawaii.gov](mailto:steven.chang@doh.hawaii.gov);  
[roxanne.kwan@doh.hawaii.gov](mailto:roxanne.kwan@doh.hawaii.gov)

Cc: Vogel, Burr M CDR NAVFAC HI, OP (b) (6)

Subject: Red Hill Administrative Order on Consent (AOC) - Non Disclosure Agreement for Subject Matter Experts

Project Coordinators,

In accordance with Section 1.1 of the Red Hill Administrative Order on Consent (AOC) Scope of Work (SOW), please find attached a Certificate of Non-Disclosure and Conflict of Interest Statement for use by third party Subject Matter Experts (SMEs). This document should be signed by SMEs who are not federal or state employees and whose participation in the AOC process is not governed by contractual agreements with the regulatory agencies. This document is different than the standard forms required of contractors because Navy and DLA cannot reference typical nondisclosure clauses and conflict of interest clauses where there is no contractual relationship with third party SMEs. It is also different than the forms and guidance used for Federal and State employees, but is intended to provide similar protections for the procurement process, critical infrastructure information, and other information that is privileged under Section 10.d of the AOC. A separate form is required to be signed by each third party SME in order to allow

us to share certain information with that individual that we are otherwise prohibited from releasing under the Procurement Integrity Act and implementing Federal Acquisition Regulations and to allow us to share information otherwise protected from disclosure under applicable Federal and State laws.

The Navy and DLA believe that this form should be adequate for allowing them to share normally protected information in scoping meetings and most AOC technical discussions attended by third party SMEs given the anticipated nature of the information to be shared and the ground rules for participation that the Parties have agreed upon to encourage full and open exchange of ideas and to protect information that may be procurement sensitive or otherwise privileged from disclosure.

The Navy and DLA understand that under the agreed upon meeting ground rules, any sharing of information obtained through oral discussions and debate will be limited to the participants and designated representatives of the Parties.

The Navy/DLA will be responsible for production of meeting summaries; any individual participant notes removed for the meeting are expected to be marked as privileged and protected from disclosure under the Deliberative Process Privilege of the Federal Freedom of Information Act (FOIA) recognizing that these discussion may involve material that is procurement sensitive and information subject to other FOIA exceptions. We understand that it is the Navy/DLA's responsibility to appropriately mark text in the meeting summaries and other submittals for which a privilege is claimed under section 10.d. of the AOC. The Parties will be responsible for providing documents to the public as appropriate. It is also understood that nothing in the attached Third Party Certificate limits the rights of Third Party SME's to request information under the FOIA or restricts the use of information obtained through the FOIA.

Navy and DLA representatives will be available by telephone at 1000 - 1100 Hawaii Standard Time on November 16, 2015, to further discuss the ground rules for participation and any issues with the Third Party Certificate with the other Parties and SMEs. A call-in number will be provided separately.

V/R,

- Jimmy / Navy and DLA Project Coordinator

James (Jimmy) A. K. Miyamoto, P.E.  
Deputy Operations Officer  
Naval Facilities Engineering Command, Hawaii  
400 Marshall Road  
Joint Base Pearl Harbor Hickam, HI 96860

(b) (6)

[www.navfac.navy.mil](http://www.navfac.navy.mil)

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